

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: Wa [REDACTED] P [REDACTED] M [REDACTED]

W [REDACTED] P [REDACTED] M [REDACTED] appeals an administrative determination of the Department of State, dated September 30, 1986, that he expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act ("The Act") by obtaining naturalization in Canada upon his own application. 1/

After the appeal was entered, the Department concluded that appellant did not expatriate himself under section 349(a)(1) of the Act. Accordingly, the Department requested that the Board remand the case so that it might vacate the certificate of loss of nationality that it had approved in appellant's name. The Board grants the request for remand.

I

A consular officer of the United States Embassy in Ottawa executed a certificate of loss of nationality in M [REDACTED] name on September 16, 1986. 2/ Therein the consular officer certified that [REDACTED] acquired United States citizenship by birth at [REDACTED]; that he acquired the

1/ Prior to November 14, 1986, section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481, read in pertinent part as follows:

Sec. 349. (a) From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by --

(1) obtaining naturalization in a foreignstate upon his own application,...

Pub. L. 99-653, 100 Stat. 3655 (Nov. 12, 1986), amended subsection (a) of section 349 by inserting "voluntarily performing any of the following acts with the intention of relinquishing United States nationality:" after "shall lose his nationality by".

2/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501, reads as follows:

Sec. 358. Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States

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nationality of Canada by virtue of birth abroad to Canadian citizen parents; that he "voluntarily relinquished citizenship via a statement of intent" on August 16, 1985, thereby expatriated himself under the provisions of section 349(a)(1) of the Act.

In forwarding the certificate to the Department consular officer made the following report on the case:

In August 1985, Mr. [REDACTED] Canadian diplomatic passport was presented to the Embassy with a request that he be issued a visa to take up his [REDACTED] in Cleveland. Upon noting that Mr. [REDACTED] was born in the U.S., he was asked to complete an application to determine his citizenship status. Mr. [REDACTED] presented a letter from the Canadian Citizenship Registration Branch indicating that he was a Canadian citizen at birth, having acquired Canadian citizenship under Section 4-1-B of the Canadian Citizenship Act. On July 6, 1971 he received a Certificate of Canadian Citizenship for which no oath was required. Mr. [REDACTED] says he cannot remember why he asked for this Certificate of Canadian citizenship at that time.

Upon completing the 'Questionnaire for determining U.S. citizenship,' Mr. [REDACTED] stated in question 10 that he thought he had taken an oath of allegiance to a foreign state (see enclosed Canadian Federal Oath of Office blank form) in order to take up his duties with the Ministry of Industry, however, failed to reveal that any such oath

2/ Cont'd.

nationality under any provision of chapter 3 of this title, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates.

had ever been taken. It should be noted that the aforementioned Ministry has merged with the Department of External Affairs and has been renamed the Ministry for International Affairs. The Oath of Office form might have been lost in the transition, and Mr. [REDACTED] could not recall subscribing to any additional oaths when the two Ministries merged. He was subsequently posted to the Canadian Consulate in Cleveland as the Consul and Trade Commissioner.

Also in question 10, Mr. [REDACTED] stated that he applied for Canadian citizenship in 1971 with the intention of relinquishing his U.S. citizenship. During the visa interview with Mr. [REDACTED] he stated that he had no particular desire to retain his U.S. citizenship and only wished to proceed to the United States as a Canadian diplomat.

Although his request for documents to prove his Canadian citizenship in 1971 is not in itself expatriating by law, his statements made concerning his intent at that time indicate that his intention was to relinquish his U.S. citizenship. Based upon Mr. [REDACTED] statements at the time of filing his registration application, he was issued an A-1 visa valid for 60 months.

ConOff recommends that the enclosed Certificate of Loss of Nationality be approved under Section 349(a)(1) of the U.S. Immigration and Nationality Act.

The Department approved the certificate on September 30, 1986, approval constituting an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. Appellant entered a timely appeal pro se.

II

The Deputy Assistant Secretary of State for Consular Affairs (Passport Services) on November 24, 1987 submitted the case file upon which the holding of loss of [REDACTED] nationality was based and a memorandum in which it requested that the Board remand the case so that it might vacate the certificate of loss of nationality it approved in his case. The Department's memorandum reads in relevant part as follows:

The case file shows that Mr. ██████ acquired Canadian citizenship automatically in 1947 as a minor under the Canadian Citizenship Act of 1946. Mr. ██████ acquired U.S. citizenship by birth in New York. He has lived nearly all his life in Canada. Mr. ██████ has worked for the Canadian government since 1971, including a 14 month tour as Consul and Trade Commissioner at the Canadian Consulate General in Cleveland. Mr. ██████ has appealed the 1986 holding of loss to the Board of Appellate Review on the grounds that he did not relinquish his U.S. citizenship.

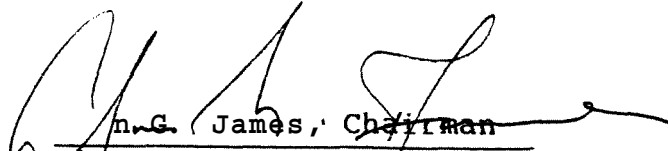
It is clear that Mr. ██████ did not naturalize in Canada and that the Certificate of Loss under Section 349(a)(1) of the INA is incorrect. It is also apparent, however, that Mr. ██████ did perform the expatriating act under Section 349(a)(4)(A) of the INA of service in a Canadian post or office while having the citizenship of Canada. There is significant evidence in the case file to indicate that Mr. ██████ intended to relinquish his U.S. citizenship when he served as a Canadian Consul at the Consulate General in Cleveland.


The Department requests that the Board remand Mr. ██████ case for cancellation of the Certificate of Loss. The Department intends to re-examine the circumstances of Mr. ██████ service in the Government of Canada to determine whether a Certificate of Loss should be approved under section 349(a)(4) of the INA.

III

Since the Department has concluded upon further examination that the certificate of loss of nationality executed in this case was grounded on an inapplicable provision of the Act, the Board will accede to the Department's request that the case be remanded for the purpose of vacating the certificate of loss of nationality.

The case is hereby remanded for further proceedings. 3/


 Alan G. James, Chairman
 Alan G. James, Chairman


 Edward G. Misey, Member


 George Taft, Member

3/ Section 7.2(a) of Title 22, Code of Federal Regulations, 22 CFR 7.2(a), provides in part that:

...The Board shall take any action it considers appropriate and necessary to the disposition of cases appealed to it.